IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 16 OF 2005

Shashikant Chhabinath Pandey .. Appellant

V/s

Mrs. Seema Shashikant Pandey .. Respondent

Mr. D.A. Dube for the Appellant.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE : 11TH OCTOBER 2005

P.C. :

1. Heard Mr.Dube in support of this Appeal. The Appellant is present in Court so also the Respondent and her mother.

2. We have heard both the parties in chamber. We tried to see if a reconciliation could be brought about, but that has not appeared to be so. Hence, we are disposing of this Appeal at the admission stage itself. This is also because all the necessary papers, which were there before the Trial Court, are annexed to this Appeal compilation.

3. The Appeal seeks to challenge the order passed by a Judge of the Family Court on 28th March 2002 in

M.J. Petition No.A-784 of 2002. The Appellant had filed that petition seeking restitution of conjugal rights. During the pendency of the petition, the parties decided to separate amicably. They entered into necessary consent terms for divorce. Subsequently, the Appellant sought to withdraw from the consent terms. That application has come to be rejected and the marriage has come to be dissolved by the impugned judgment and decree.

4. Short facts leading to this Appeal are as follows:-

. The Appellant and the Respondent were married on 11th June 1997. It is the case of the Appellant that the parties stayed together for about 2 years, whereas it is the case of the Respondent that they hardly stayed together for 2 months. Thereafter they have not been staying together. There is no issue from this marriage.

5. The Appellant filed the aforesaid petition for restitution contending that there was no reason for the Respondent not to stay together. During the pendency of the petition, the parties had discussion before the Marriage Counsellor and consent terms were signed by both of them which were explained to them in Hindi and

understood by them and then signed before the execution. The consent terms signed on 8th October 2001 read as follows:-

"CONSENT TERMS FOR DIVORCE

Both the parties are agreeable for divorce by mutual consent on following terms and conditions

1. Both the parties hereby withdraw all the allegations made against each other in the said proceedings.

2. The parties got married on 11.6.1997 and they have been living separately since 30.7.1999.

3. There is no issue from this marriage.

4. The respondent waives her right of maintenance and permanent alimony from the petition for the past, present and future.

5. There is no exchanges between the parties.

6. In view of the above consent terms there are no dues and claims of whatsoever nature against each other.

7. Consent terms are read over in English and explained in Hindi and understood by both before execution.

sd/- 8.10.2001
Petitioner

sd/- 8.10.2001
Respondent

8th October 2001

Before me

sd/- 8.10.2001
Marriage Counsellor,
Family Court, Mumbai
at Bandra."

6. It appears that thereafter the Appellant had second thoughts and he filed an application on 23rd November 2001 stating that the case filed by him be proceeded in accordance with law. The withdrawal application was resisted by the Respondent by filing her reply on 21st January 2002. The matter was thereafter argued before the Judge of the Family Court who has treated the original restitution petition as one converted into a petition for divorce by consent and decreed this converted divorce petition. It is material to note that even in the application for proceeding with that case filed by the Appellant on 23rd November 2001, the Appellant states that the consent terms were signed

by the parties for divorce on 8th October 2001. All that he says is that thereafter the brother of the Respondent insulted him in public. It is for this reason that he applied for withdrawal of the consent terms requesting that the case be proceeded in accordance with law. Thus, what is material to note is that at no point of time, the Appellant himself disputed having signed the consent terms nor has he alleged that consent was vitiated in any way by misrepresentation, fraud or coercion.

7. The learned Judge of the Family Court has gone into all these aspects. She has recorded that the contention of the Appellant is also not that the consent was obtained by fraud, undue influence or force. She had thereafter referred to Order 23 Rule 3 of C.P.C. and then granted the decree for divorce on the basis that the original restitution petition stood converted into a petition for divorce by consent.

8. Mr.Dube for the Appellant submitted that the Appellant was keen on restitution of his marriage with the Respondent. Inasmuch as this submission was made, we had a word with the Respondent who is present in chamber. She has declined to join the Appellant who is her former husband. She has, on the contrary, stated

that she has every reason to part company because of various instances of ill-treatment as claimed by her.

9. In any case, the consent terms signed by the parties on 8th October 2001 do not cast any burden whatsoever on the Appellant. The Respondent has given up her right of maintenance or permanent alimony for her. There are no allegations made by the parties against each other. In the circumstances, we do not think that there was any error on the part of the learned Judge in passing the decree which she has passed. Hence, the Appeal is dismissed. There will be no order as to costs.

(H.L. GOKHALE, J.)

(MRS. R.S. DALVI, J.)